

Shirley Shane (“Shane”) was convicted in Marion Superior Court of Class A misdemeanor intimidation.¹ The court sentenced her to 365 days, with 363 days suspended. Shane appeals, arguing that the doctrine of impossibility applies, resulting in the insufficiency of evidence to support her conviction. Concluding that her intimidation conviction is supported by sufficient evidence, we affirm.

Facts and Procedural History

Ellen Redmon (“Redmon”) lived approximately four houses down the street from Shane. The two were engaged in an ongoing dispute, to the point where Community Resources Officer Steve Knight had previously been called to mediate the situation. Tr. pp. 14-15.

On July 8, 2005, as Redmon was leaving her home to have dinner with her husband, “Shane was headed down towards the house in a fit of fury . . . swinging her arms back and forth and walking really fast towards the house.” Tr. p. 7. Redmon called the police and Officers Steven Donahue (“Officer Donahue”) and Gregory Popcheff (“Officer Popcheff”) responded to the scene. After speaking with Redmon, Officers Donahue and Popcheff proceeded to Shane’s home where they found Shane sitting on a porch swing. Tr. pp. 13-14, 18. The officers attempted to speak with Shane about the fact that she could not go to Redmon’s home, but Shane “was not listening” and “was very irate.” Tr. p. 15. At one point, Shane began yelling, “[T]ake me to jail, take me to jail[.]” Id. After five to ten minutes, the officers started to leave, but stopped when Shane proclaimed, “I’m going to bust her ass.” Tr. pp. 15-16, 26-27.

¹ Ind. Code § 35-45-2-1 (2004).

Officers Donahue and Popcheff placed Shane under arrest and handcuffed her. As they walked her down to Officer Donahue's patrol car, which was located in front of Redmon's house, Shane repeated her threat "a couple of times." Tr. p. 16. Shane looked at Redmon, who was sitting in her van outside the house, and told her that she was going to "whip her ass." Tr. pp. 8, 10.

Shane was charged with Class A misdemeanor intimidation. Appellant's App. p. 14. The trial court found Shane guilty and sentenced her to 365 days, with 363 days suspended. Appellant's App. pp. 10-11. Shane now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Shane contends that "her actions constituted impossibility," and therefore her conviction must be reversed. Br. of Appellant at 4. Specifically, Shane contends that Redmon "could not have been placed in fear for retaliation due to her distance away" and the fact that Shane was in custody at the time. Id. We disagree. Moreover, we observe that the State is correct in its assessment that Shane's challenge based upon the impossibility doctrine is merely a challenge to the sufficiency of the evidence. See Br. of Appellee at 3.

Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor judge the credibility of the witnesses. Cox v. State, 774 N.E.2d 1025, 1029 (Ind. Ct. App. 2002). We only consider the evidence most favorable to the verdict and the reasonable inferences that can be drawn therefrom. Id. Where there is

substantial evidence of probative value to support the verdict, it will not be disturbed. Armour v. State, 762 N.E.2d 208, 215 (Ind. Ct. App. 2002), trans. denied.

Shane was charged with Class A misdemeanor intimidation by information that states, in relevant part, as follows:

On or about 7/8/05 ... Shirley Shane, did communicate a threat to Ellen Redmon, another person, said threat being: to beat her ass, with the intent that the other person be placed in fear of retaliation for a prior lawful act, to wit: for calling the police to report problems.

Appellant's App. p. 14. To support a conviction for Class A misdemeanor intimidation, the State is required to prove that Redmon had engaged in a prior act, which was not contrary to law, and that Shane intended to retaliate against Redmon for the prior lawful act. See Ind. Code § 35-45-2-1 (2004).

The evidence in this case establishes that Redmon called the police after observing Shane coming toward her home in a "fit of fury," angrily swinging her arms back and forth and walking fast. There had been ongoing disputes between the two neighbors. Officers Donahue and Popcheff spoke with Redmon and then approached Shane's home, where they found Shane sitting on a porch swing. The officers' attempts to speak with Shane were unsuccessful because she was uncooperative and not listening. As the officers began to leave, Shane yelled, "I'm going to bust her ass," prompting her arrest. Tr. pp. 15-16, 26-27. Shane repeated her threat to Redmon two or three times as she was being escorted to Officer Donahue's patrol car. At one point, Shane looked Redmon in the eyes and told her that she was going to "whip her ass." Tr. pp. 8, 10. Shane clearly communicated a threat to Redmon as a means of placing her in fear of retaliation for Redmon's lawful act of calling the police.

Shane's contention that Redmon could not have been placed in fear due to her distance at the time of the threat and the fact that she was in custody is unpersuasive. Pursuant to the statute, the fear need only be of retaliation at some point after the threat is made; immediacy is not an element of the offense. See Ind. Code § 35-45-2-1(a) (2004). Under these facts and circumstances, we conclude that there is sufficient evidence to support Shane's conviction for Class A misdemeanor intimidation.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.